

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

NEHEMIAH LIMITED PARTNERSHIP

Respondent

Case No.: I-00-20210
I-02-72011

FINAL ORDER

I. Introduction

On February 12, 2002, the Government served a Notice of Infraction upon Respondent Nehemiah Limited Partnership alleging that it violated 22 DCMR 107.1, which permits the Department of Health to issue orders to owners or occupants of buildings requiring them to take specified measures to prevent rat infestation or to exterminate rats present at their property. The Notice of Infraction alleged that the violation occurred on February 11, 2002 at 2400L 14th Street, N.W., and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on March 20, 2002, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$1,000 required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served a second Notice of Infraction on March 27, 2002. On April 17, 2002, Respondent filed a plea of Admit with Explanation, together with a request for suspension or reduction of the fine and statutory penalty. The Government has replied to Respondent's plea.

II. Summary of the Evidence

Respondent states that the violation resulted from illegal dumping into and around a dumpster maintained by its tenant at the property. It states that it employs a cleaning company, which is there every day between 7 and 10 AM to clean the shopping center where the violation occurred, and that its tenant also checks the dumpster during every shift to assure that the area is clean. It also has provided copies of correspondence with its tenant, dated April 8 and April 12, 2002, approximately two months after the violation, in which it urges the tenant to "be more vigilant in observing what transpires behind your location" and to lock the dumpster when it is not being filled. The April 8 letter also states that Respondent has contacted a pest control service to bait the area to eliminate rats.

Respondent also has filed copies of four notices of violation that it has received from the Department of Public Works alleging violations of 21 DCMR 700.3, which requires property owners to contain solid wastes properly. Those notices allege that the violations occurred between February 25, 2002 and March 25, 2002. Respondent asks that the Department of Health and the Department of Public Works "combine efforts to avoid duplication" and that it be granted "a 60-day extension to resolve this problem." Respondent offers an apology for failing to file a timely response to the first Notice of Infraction, but does not explain the reason for that failure. The Government states that Respondent clearly violated § 107.1 and should be held accountable.

III. Findings Of Fact

Respondent's plea of Admit with Explanation establishes that it failed to comply with an order from the Department of Health to take specific actions to control or eliminate rats at the property located at 2400L 14th Street, N.W. on February 11, 2002. Respondent has provided an explanation for the trash that has accumulated at its property, but has not explained why it failed to comply with the abatement order. While Respondent has undertaken some efforts to keep the property clean, it has provided no evidence that it or its tenant actually has obtained a lock for the dumpster. Nor has it explained why it waited almost two months after issuance of the Notice of Infraction to contact the pest control company or to encourage the tenant to obtain a lock.

Respondent has a history of prior regulatory violations, having been found liable for violating 21 DCMR 534.2 and 532.4(c) in *DOH v. Nehemiah Center Limited Partnership*, Case No. I-00-11026. Respondent has not paid the \$200 fine assessed by the Partial Closure Order issued in that case on June 20, 2001.

There is no evidence of the reason why Respondent did not answer the first Notice of Infraction.

IV. Conclusions of Law

The Department of Health is authorized by 22 DCMR 107.1 to issue orders requiring property owners to take certain steps to prevent rat infestation and to eliminate any existing infestation of rats. Failure to comply with any such order is a Class 1 infraction, punishable by a fine of \$1,000 for a first offense. 16 DCMR 3216.1(j). Respondent's plea of Admit with Explanation establishes that it violated § 107.1.

There is no basis to suspend or reduce the \$1,000 fine. Respondent has offered no explanation for its failure to begin the abatement effort until April, some two months after issuance of the Notice of Infraction. Respondent's additional efforts to ameliorate conditions at the property have consisted of relatively recent attempts to encourage its tenant to take additional actions. Respondent and its tenant have had sufficient time to institute actual corrective actions, and Respondent has failed to explain why it waited so long before taking steps to eliminate the problem. Its request for an additional 60 days to complete its corrective efforts demonstrates a lack of appreciation of the seriousness and immediacy of its obligation to eliminate conditions at its property that are attractive to rats. Respondent also has a history of prior regulatory violations, for which it has not yet paid the required fine. Accordingly, there will be no reduction in the fine of \$1,000 for Respondent's violation of § 107.1.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Because Respondent introduced no evidence of its reasons for not responding to the first Notice of Infraction, there is no basis for suspending or reducing the additional \$1,000 penalty required by law.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/16/02**

John P. Dean
Administrative Judge